

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DAVID G. HOTCHKISS, an unmarried )  
man, ) No. CV-12-00105-TOR  
Plaintiff, ) ORDER GRANTING STIPULATED  
vs. ) PROTECTIVE ORDER  
 ) REGARDING CONFIDENTIAL  
 ) INFORMATION  
CSK AUTO, INC.; CECIL LEWIS, a )  
married man; DON REALING, an )  
unmarried man; TROY HUFFMAN, a )  
married man, )  
Defendants. )

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Parties' Joint Motion for Entry of a Protective Order Regarding Confidential Information is GRANTED.

Accordingly, IT IS HEREBY ORDERED as follows:

Pursuant to FRCP 26(c), the parties through their respective counsel agree and stipulate that good cause exists to protect the plaintiff David G. Hotchkiss ("Hotchkiss"), the defendants CSK Auto, Inc., Cecil Lewis, Don Realing and Troy Huffman ("CSK, Inc."), and non-parties from improper

1 disclosure/publication, annoyance, undue burden and expense from the public  
2 disclosure of Confidential Information.

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4 Any party to this litigation may designate as "Confidential" documents,  
5 materials and/or information produced by the party or a third-party  
6 ("Designating Party") that the Designating Party reasonably and in good faith  
7 believes constitutes or contains "Confidential Information." "Confidential  
8 Information" means private, confidential, trade secret, commercially sensitive,  
9 and/or proprietary in nature which is not publicly known and cannot be  
10 ascertained from an inspection of publicly available documents, materials, or  
11 devices. All medical, employment, and other records received by defense  
12 counsel pursuant to any release authorization signed by Plaintiff shall be  
13 stamped and marked by defense counsel and treated as Confidential without  
14 Plaintiff's counsel or the records custodian first affixing the "Confidential"  
15 designation.

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17 1. This Stipulated Protective Order ("Protective Order") shall govern  
18 the treatment and handling of all documents or other products of discovery  
19 designated "Confidential" by Hotchkiss and CSK, Inc., or information derived  
20 therefrom, and all copies, excerpts or summaries thereof including (without  
21 limitation), FRCP 26 disclosures, answers to requests for admissions, answers to  
22 interrogatories, documents produced pursuant to a demand for documents,  
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1 documents subpoenaed in connection with depositions, and deposition  
2 transcripts.

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4 2. Hotchkiss and CSK, Inc. may designate documents as  
5 “Confidential” and thus subject to the terms of this Protective Order by fixing a  
6 notation to such documents, materials, or information, or by other appropriate  
7 written notice to opposing counsel. Hotchkiss and CSK, Inc. may designate  
8 “Confidential” or “CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER,”  
9 those documents that they believe contain Confidential Information. Testimony  
10 taken in deposition in this case similarly may be designated as Confidential and  
11 made subject to the terms of this order at the time of the deposition on the record  
12 or as soon as practicable, but no later than 15 business days from the receipt of  
13 any transcript of the testimony.  
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17 3. Any party may dispute the “Confidential”  
18 designation of any information designated as Confidential. If the dispute  
19 cannot be resolved by the Parties after conferring in good faith, the Party  
20 challenging the designation may request appropriate relief from the Court. No  
21 disclosure shall be made of any Confidential Information designated  
22 Confidential until such time as the matter is determined by the Court. The  
23 burden of proving that the information has been properly designated  
24 “Confidential” is on the Designating Party.  
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1           4. Information designated "Confidential" pursuant to this order shall  
2 not be disclosed or disseminated outside of the offices of plaintiff's and  
3 defendants' counsel, with the following exceptions.  
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5           a. Use of such Confidential Information for trial  
6 preparation by paralegal or secretarial staff of plaintiff's and defendants'  
7 attorneys is allowed by this Protective Order, subject to all conditions of this  
8 Protective Order which govern the parties' use of such Confidential Information;  
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10           b. Information designated by the parties as  
11 "Confidential" may be provided to expert witnesses, or consultants by plaintiff's  
12 or defendants' attorneys provided such expert witnesses or consultants, before  
13 being allowed to see any Confidential Information in writing acknowledge  
14 receipt of a copy of this Protective Order and agree to be bound by the terms of  
15 this Protective Order. The prohibition of this paragraph shall apply in all  
16 circumstances, including, but not limited to, depositions in this case.  
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19           c. The Court, Court personnel and jurors under such  
20 limitations as the Court may determine;  
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22           d. Court reporters and videographers shall, in the course  
23 of their employment by the parties, shall have access to Confidential  
24 Information and/or depositions designated as "Confidential" subject to all  
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1 conditions of this Protective Order which governs the parties' use of such  
2 Confidential Information.

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4 5. Expert witnesses, consultants, court reporters, and videographers  
5 employed by counsel of record for the parties shall be required, before being  
6 allowed to see any Confidential Information, agree to be bound by the terms of  
7 this Protective Order by executing a Confidentiality Agreement in the following  
8 form:  
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10 CONFIDENTIALITY AGREEMENT

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12 I agree to be bound by the terms of the Stipulated Protective Order  
13 entered in this action and will not reveal Confidential Information to any person  
14 or entity other than as allowed by the Stipulated Protective Order.  
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16 I certify under penalty of perjury that the foregoing is true and correct.

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19  
20 DATED this \_\_\_\_ day of \_\_\_\_, 20\_\_

21 [Name]

22 [Signature]

23  
24 6. All summaries and exhibits prepared from Confidential Information  
25 shall be stamped "Confidential" or "CONFIDENTIAL: SUBJECT TO  
26 PROTECTIVE ORDER" by counsel causing them to be prepared.  
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1           7. All persons having access to Confidential Information made  
2 available pursuant to this agreement shall agree not to make any use of said  
3 Confidential Information except in connection with the above-captioned  
4 litigation and shall further agree not to deliver or transfer said Confidential  
5 Information to any person not previously authorized by the terms herein.  
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8           8. Counsel disclosing Confidential Information to any person or entity  
9 shall be responsible for limiting distribution of the Confidential Information to  
10 those persons who both (1) have a need to know the information, and (2) are  
11 authorized to receive the information under this Protective Order.  
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13           9. All copies of Confidential Information disclosed under this  
14 agreement shall be subject to the same restrictions as imposed on the original  
15 information.  
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17           10. Information designated as “Confidential” and disclosed to any  
18 person pursuant to this Protective Order shall remain in the possession only of  
19 the attorneys, or the experts or consultants to whom they are disclosed as  
20 provided by this order. The attorneys may not retain any information designated  
21 as “Confidential” pursuant to this order after the conclusion of this litigation or  
22 the trial of this case, whichever comes first.  
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25           11. The parties agree that the inadvertent production of privileged  
26 material shall not result in the waiver of any associated privilege nor result in a  
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1 subject matter waiver of any kind. Both parties agree to return any privileged  
2 material disclosed immediately upon notice of the inadvertent disclosure or upon  
3 an independent determination that privileged material has been disclosed. The  
4 parties agree that no copies will be made of the disclosed privileged materials  
5 and that the privileged materials shall not be used as evidence.  
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8 12. Upon completion of this litigation, all Confidential Information  
9 and all copies thereof shall be returned to the attorneys or destroyed and written  
10 notice of their destruction provided.  
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12 13. No modification or amendment of this Protective Order is  
13 permitted except by a writing signed by counsel for the parties and approved by  
14 the Court. The parties hereto agree that it is unreasonable to rely on any oral  
15 modification or amendment of this agreement.  
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17 14. The failure to insist upon full compliance with any of the terms  
18 of the Protective Order in any instance shall not be deemed to be a waiver of the  
19 right to insist upon full compliance with those terms thereafter.  
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21 15. If a party intends to quote or attach Confidential Information in  
22 any filing with this Court or any Appellate Court (including, without limitation,  
23 any pleading, affidavit, declaration, brief, memorandum, appendix, or deposition  
24 transcript), then that party shall give ten days notice of such intent to all other  
25 parties to provide an opportunity to agree to or to file a motion for proper  
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1 safeguards including to seal or redact such filing. No documents designated as  
2 “Confidential” shall be filed with the Court, and shall be provided to the Court  
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4 for an *in camera* review until such time the Court has had an opportunity to hear  
5 and decide the Designating Party’s motion to seal.

6       16. All Confidential Information that any party intends to use at trial  
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8 shall be specifically identified and disclosed to opposing counsel no later than  
9 30 days before trial so that appropriate protection against publication or  
10 dissemination at trial may be sought by agreement of counsel for the parties or  
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12 by motion to the Court for proper safeguards including to seal or redact.

13       17. By executing this Protective Order the parties and their respective  
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15 counsel certify that prior to the disclosure of any Confidential Information as  
16 provided herein, the proposed recipient of the information will be first provided  
17 a copy of this Protective Order and required to execute a Confidentiality  
18 Agreement in the form set forth above for experts and consultants.

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20       18. A conformed copy of this order shall be provided to the parties,  
21 who shall sign and date it, acknowledging that they have read and understand it.  
22 The signed copies shall be provided to the respective attorneys.  
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1 Any violation of the terms of this Protective Order shall subject the  
2 violator to sanctions as determined by the Court.  
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4 DATED this 27<sup>TH</sup> day of July, 2012.

5 *s/ Thomas O. Rice*  
6 THOMAS O. RICE  
7 United States District Judge  
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